September 13, 1994

OPINION NO. 94-060

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

You have submitted an opinion request in which you ask "whether a board of county commissioners can hire an officer regularly employed by the humane society as a duly appointed humane agent as part of the dog warden's staff, yet continuing the duties of a humane agent pursuant to [R.C. Chapter 1717] but have his or her entire compensation paid from the dog and kennel fund?" A member of your staff has indicated that the county commissioners propose hiring a person currently employed as a county humane society agent and conferring upon that agent the title of deputy county dog warden, even though the agent would continue to perform only the duties of a county humane society agent and not those of a deputy county dog warden. Because the county commissioners have no authority to hire a person to serve as a deputy county dog warden but to perform none of the duties of that position, your question has been restated to ask whether the county commissioners may use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the county humane society as a county humane society agent.[1]

Authority of Board of County Commissioners

It is well settled that a board of county commissioners is a creature of statute and has only those powers either expressly granted by statute or necessarily implied from its express powers. *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). In *State*

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[1] 1933 Op. Att'y Gen. No. 338, vol. I, p. 360 concluded that the positions of county dog warden and county humane society agent were not incompatible. It appears that in the situation you describe, however, the county commissioners do not contemplate hiring a person who is an agent of a county humane society to serve as the dog warden or a deputy, *see* R.C. 955.15, but rather to use moneys from the dog and kennel fund to pay the salary of such an agent.

ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 571-72 (1916), the court specifically addressed the authority of a board of county commissioners to expend county funds:

> The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.

Thus, whether the board of county commissioners may pay the salary of an agent of the county humane society from the dog and kennel fund for his employment as a county humane society agent depends upon whether any statute authorizes the board to take such action.

Dog and Kennel Fund

Pursuant to R.C. 955.19, "[a]ll funds received by the county dog warden or poundkeeper in connection with the administration of [R.C. 955.01-.18] shall be deposited in the county treasury and placed to the credit of the dog and kennel fund." R.C. 955.20, in part, prescribes the permitted uses of the dog and kennel fund:

> The registration fees provided for in [R.C. 955.01-.14] constitute a special fund known as "the dog and kennel fund," which shall be deposited by the county auditor in the county treasury daily as collected, and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets, and other equipment, for the purpose of paying the compensation of county dog wardens, deputies, poundkeepers, and other employees necessary to carry out and enforce [R.C. 955.01-.261], and for the payment of animal claims as provided in [R.C. 955.29-.38], and in accordance with [R.C. 955.27]. The board of county commissioners, by resolution, shall appropriate sufficient funds out of the dog and kennel fund, not more than fifteen per cent of which shall be expended by the auditor for registration tags, blanks, records, and clerk hire, for the purpose of defraying the necessary expenses of registering, seizing, impounding, and destroying dogs in accordance with [R.C. 955.01-.27].

Additional provision is made in R.C. 955.27 for the disposition of surplus in the dog and kennel fund, as follows:

> After paying all necessary expenses of administering the sections of the Revised Code relating to the registration, seizing, impounding, and destroying of dogs, including the purchase, construction, and repair of vehicles and facilities necessary for the proper administration of such sections, making compensation for injuries to livestock inflicted by dogs, and after paying all horse, sheep, cattle, swine, mule and goat claims, the board of county commissioners, at the December session, if there

> remains more than two thousand dollars in the dog and kennel fund for such year in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized by law, and having one or more agents appointed pursuant to law, or any other society organized under [R.C. Chapter 1717] that owns or controls a suitable dog kennel or a place for the keeping and destroying of dogs which has one or more agents appointed and employed pursuant to law, may pay to the treasurer of such society, upon warrant of the county auditor, all such excess as the board deems necessary for the uses and purposes of such society.

Thus, the board of county commissioners is limited in the purposes for which it may spend the moneys in the dog and kennel fund to those that are expressly prescribed by statute.

Authority of County Commissioners to Hire Persons for Animal Control

R.C. 955.12 states in part: "The board of county commissioners shall appoint or employ a county dog warden and deputies in such number, for such periods of time, and at such compensation as the board considers necessary to enforce [R.C. 955.01-.27, R.C. 955.29-.38, and R.C. 955.50]." Pursuant to R.C. 955.20, the salaries of the dog warden and his deputies are paid from the dog and kennel fund.

Additional authority to hire personnel is set forth in R.C. 955.15, which states in pertinent part:

> The board may designate and appoint any officers regularly employed by any society organized under [R.C. 1717.02-.05 (including county humane societies)] *to act as county dog warden or deputies* for the purpose of carrying out [R.C. 955.01-.27 and R.C. 955.29-.38], if such society whose agents are so employed owns or controls a suitable place for keeping and destroying dogs. (Emphasis added.)

Pursuant to R.C. 955.15, a board of county commissioners may, therefore, hire a county humane society agent to perform many of the duties of the dog warden or a deputy warden.

County Humane Societies

R.C. 1717.05 provides for the establishment of a county humane society "by the association of not less than seven persons." After following the procedures prescribed by R.C. 1717.05 for the establishment of such a society, "the board of directors and the associates [of the county humane society], and their successors, shall have the powers, privileges, and immunities incident to incorporated companies." R.C. 1717.05.

The appointment of county humane society agents is governed by R.C. 1717.06, which states in part:

> A county humane society organized under [R.C. 1717.05] may appoint agents, who

> are residents of the county or municipal corporation for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals. Such agents may arrest any person found violating [R.C. 1717.01-.14], or any other law for protecting persons or animals or preventing acts of cruelty thereto....
>
> All appointments of agents under this section shall be approved by the mayor of the municipal corporation for which they are made. If the society exists outside a municipal corporation, such appointments shall be approved by the probate judge of the county for which they are made.

Thus, a board of county commissioners has no authority to hire persons to serve as agents of a county humane society.

The compensation of county humane society agents is governed by R.C. 1717.07, which states:

> Upon the approval by the mayor of a municipal corporation of the appointment of an agent under [R.C. 1717.06], the legislative authority of such municipal corporation shall pay monthly to such agent, *from the general revenue fund of the municipal corporation*, such salary as the legislative authority deems just and reasonable. Upon the approval by the probate judge of a county of such an appointment, the board of county commissioners of such county shall pay monthly to such agent, *from the general revenue fund of the county*, such salary as the board deems just and reasonable. Such board and such legislative authority may agree upon the amount each is to pay such agent monthly. The salary to be paid monthly to such agent by the legislative authority of a village shall be not less than five dollars; the legislative authority of a city, not less than twenty dollars; and by the board of county commissioners of a county, not less than twenty-five dollars. *Not more than one such agent in each county shall receive remuneration from the board under this section.* (Emphasis added.)

Pursuant to this statute, county humane society agents who are appointed by a humane society that exists outside of a municipal corporation are entitled to receive compensation from the general revenue fund of the county, but not from the county dog and kennel fund.

Payment of Salaries from Dog and Kennel Fund

The information provided by a member of your staff indicates that the county commissioners would like to use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the county humane society as an agent of the society. The authority of the county commissioners to pay salaries from the county dog and kennel fund, however, is limited to the payment of "compensation of county dog wardens, deputies, poundkeepers, and other employees necessary to carry out and enforce [R.C. 955.01-.261]." R.C. 955.20. The position of county humane society agent is simply not one of the positions enumerated

in R.C. 955.20, the salary of which may be paid from the dog and kennel fund. Although the duties of the county dog warden and his deputies, as prescribed by R.C. Chapter 955, are similar in some respects to those granted by R.C. Chapter 1717 to county humane society agents, the positions of county dog warden or deputy county dog warden and county humane society agent are recognized to be distinct from one another in the statutes themselves. Consequently, the board of county commissioners is without authority to use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the county humane society as a humane society agent.

Financial Assistance to County Humane Society

Although the board of county commissioners has no authority to use moneys from the dog and kennel fund directly to pay the salary of a humane society agent for his service to the county humane society as an agent of the society, the county may otherwise be able to provide financial assistance to a county humane society from the dog and kennel fund. Pursuant to R.C. 955.27, if there remains more than two thousand dollars in the dog and kennel fund, the board of county commissioners may, at the December session, appropriate "all such excess as the board deems necessary for the uses and purposes of" a qualifying humane society. If the county commissioners were to appropriate moneys from the dog and kennel fund surplus to the county humane society as permitted by R.C. 955.27, the county humane society could use such moneys to pay the salary of any of its agents or for any other of its legitimate statutory purposes. *See also* R.C. 1717.15 (permitting a board of county commissioners annually to appropriate moneys to a county humane society from the general fund of the county "to be used to carry out the activities of the society"). Thus, even though a board of county commissioners may not use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the humane society as one of its agents, the board may, as permitted by R.C. 1717.15 and R.C. 955.27, provide financial assistance to a qualifying county humane society for the use of the society in carrying out any of its activities, which could include paying the salary of any of its agents.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners has no authority to use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the county humane society as an agent of the society.

2. Pursuant to R.C. 955.27, if there remains more than two thousand dollars in the county dog and kennel fund, the board of county commissioners may, at its December session, appropriate any part of such surplus to a qualifying county humane society, which may use such money to pay the salary of any of its agents or for any other of its legitimate statutory purposes.

Respectfully,

LEE FISHER
Attorney General

September 13, 1994

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park
Mansfield, Ohio 44902

SYLLABUS: 94-060

1. A board of county commissioners has no authority to use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the county humane society as an agent of the society.

2. Pursuant to R.C. 955.27, if there remains more than two thousand dollars in the county dog and kennel fund, the board of county commissioners may, at its December session, appropriate any part of such surplus to a qualifying county humane society, which may use such money to pay the salary of any of its agents or for any other of its legitimate statutory purposes.